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International Trade at a Crossroads: The Role of International Law and International Institutions in the Post Uruguay Round Era

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International Trade at a Crossroads: The Role of International Law and International Institutions in the Post Uruguay Round Era

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October 11, 1991

University of Nebraska College of Law

This Article is intended to share with you my perspective and that of others actively involved in the ongoing negotiations of the Uruguay Round of the GATT. I discuss the present status of the Round, and America's post-round trade agenda.¹

I. INTRODUCTION

As our world becomes ever smaller and our need to work coopera-

* Address of the Honorable David K. Karnes before the Ford Foundation/American Society of International Law Regional Conference held at the University of Nebraska College of Law on October 11, 1991. Since 1989, Karnes has been Of Counsel to Kutak Rock, Omaha, NE and Washington, D.C. He is a member of the United States Advisory Committee on Trade Policy and Negotiations. Karnes is the President and CEO of The Fairmont Group, Inc.; a merchant banking, international trade and consulting joint venture. He served Nebraska as a United States Senator from March 1987 until January 1989.

1. I acknowledge and thank the Ford Foundation, the American Society, the College of Law, Professor McGeorge and the University's Center for International Trade Policy for sponsoring the Conference.

tively among nations and people, both politically and economically, becomes ever greater, opportunities to communicate, to discuss, to educate and to understand America's trade interests are vital if thoughtful public policy is to emerge and, more importantly, be implemented.

On April 5th of 1991, I noted in my presentation made in conjunction with the University of Nebraska's Hendricks Symposium on *American Trade Policy in a Changed World Political Economy* that our Congress and our trade policy was then at a historic juncture. That juncture was the debate on fast-track authority—a Congressionally approved negotiating authority which is the cornerstone of America's credibility in trade negotiations.

Now I see that we have moved from my "historic juncture" to an "international trade crossroads."² The unfortunate fact of life in most multilateral trade negotiations—and the reason that they are so frustrating to so many—is that there are "historic junctures" and "crossroads" somewhere, with someone, every sixty days! The great satisfaction of accomplishing one goal—making the correct decision at one crossroads—only assures one of another such dilemma surfacing just around the corner.

What is the role of International Law and International Institutions in the Post Uruguay Round Era? First, nothing is more important to this Country and indeed the community of nations than the implementation of, and adherence to, an effective, fair, enforceable multilateral international trading regime and the laws and institutions to support them.

Without meaningful, acceptable laws and institutions the world becomes a den of thieves with every man, every country, living and acting only for themselves. Only short term goals would be addressed. Indeed, the theme would be "live for today."

Thus, the General Agreement on Tariffs and Trade (GATT), even without the success of its vitally important Uruguay Round, is the world's most important trade agreement. Under GATT sponsorship the world's trading nations have held seven successful rounds of negotiations since World War II in which tariff rates have been slashed by more than 75 percent. As a result, trade has exploded from just \$60 billion in 1950 to \$4 trillion in 1991. GATT and its associated laws and institutions allowed much of this growth to happen without too much pain, suffering and bloodshed.

What will our trading world look like if the Uruguay Round fails? We need not look any further than what is actually happening today.

2. Testimony of Ambassador Carla A. Hills, United States Trade Representative, before the Committee on Ways & Means, Subcommittee on Trade, U.S. House of Representatives, Washington D.C., Oct. 8, 1991.

One-third of the world's trade—more than \$1 trillion of international commerce a year—is not adequately covered by internationally agreed rules. Coverage for agriculture is ineffective. Services, investment and intellectual property are not covered at all. Let me share with you the colorful perspective from one of the United States most successful export sectors—entertainment products.

The first week of October 1991 at Georgetown University, a prominent American and colleague of mine on the ACTPN (United States Advisory Committee on Trade Policy & Negotiations)—Jack Valenti,³ described the effect on the motion picture industry, specifically, and American intellectual property interests generally, of not having international laws and institutions in place—thus no GATT coverage, as follows:

There's a war going on at this very minute that could shatter your future. That war is the clash of imports versus exports.

It is a global struggle removed from the headlines, disguised as 'trade negotiations.' The first test will be the United States response to pressures of other countries whose aim it is to cripple the ability of American movies, T.V. programs, books, recordings and computer software to gain entry to world marketplaces.

The discord between the free and Communist world has petered out for the time being. To the democracies of the West, the future is less dependent on missiles and tanks than it is on manufacturing and services. Now the duel begins: a brawl between national economies, a battle that feeds on the fury of determining who will make the goods and create the services that a global marketplace chooses to buy.

One doesn't have to read the entrails of a pig to see the signs.

The delicate irony that runs like a twanging wire through all the geo-political summits and conferences that infest the world is that the deader the Cold War becomes, the more will economic exertions strain the stretching limits of political treaties and trade accords. The final triumph will come to one or a group of countries not when their armies and air fleets have flattened the enemy but when they march into territories under a banner on which is emblazoned the signature of their companies whose products dominate the malls and the stores. Surplus balances of trade or its sour counterpart, deficit balances, will supplant body counts and bomb tonnage. Robert Mosbacher and Carla Hills will displace Colin Powell and Norman Schwarzkopf as commanders in the field. . . .

In the European Community, twelve nation-states are grinding down barriers that lie between them, and building barriers that separate them from the rest of the world. In the thriving states on the rim of Asia, in Japan, the headwaters of the most powerful global trading country in the known world, this war is real.

The European Community now wields a gross national product equal to ours, with a hundred million more people than inhabit the United States. They are stringing their trade bows tight, and the smell of export conquest is in their parliamentary nostrils. There is in Brussels and Strasbourg a lamentable squinting toward Fortress rather than Freedom. . . .

3. President of the Motion Picture Association of America and former Chief of Staff for President Johnson.

This calamitous litany could go on and on, but who needs so many Maalox Moments. As the T.V. commercial goes, we haven't got time for the pain. . . .

So it is that the United States says farewell to the Communism versus the West conflict, and buckles on its armor for the export versus import struggle. Mark it well: No battle to preserve America's ability to compete globally is more important than the challenges to the freedom of America's creative industries to move unhobbled around the world.⁴

Valenti presents the picture graphically. Indeed, it is not a pretty picture. But do not lose faith. The Round is not over. What is today's status of the Round?

II. STATUS OF THE ROUND

Status reports of the Uruguay Round include multiple statements of concern, hedged confidence and international finger pointing. First, from the institution itself, the GATT and Director-General Arthur Dunkel.

On September 20, 1991, Mr. Dunkel noted that plans are under way to prepare a new draft agreement of Round concessions that would include the political and technical decisions needed to bring the negotiations to a conclusion. However, even if this final agreement for all seven negotiating groups is struck, several months' worth of work remain in order to complete detailed concessions on market access for goods, services and GATT institutional issues. Further draft negotiating texts must be put together in at least four areas where no accepted texts currently exist—agriculture, anti-dumping, trade-related investment measures and balance-of-payment measures. In sum, Mr. Dunkel admitted that key trading partners must decide whether they have the political will to conclude the negotiations because he will not allow them to drag on.

As a result of this Dunkel statement the Cairns Group of agricultural exporters expressed concerns whether the Director-General has the capacity to achieve the difficult compromises required of the key negotiating nations or if he will increasingly push the status quo positions held by the EC and Japan.

United States Trade Ambassador Carla Hills advised our ACTPN group earlier⁵ this week that Round negotiations can be concluded early in 1992 provided negotiations in agriculture begin in earnest in December. A big proviso, if Round history is considered.

Hills welcomed Dunkel's draft final agreements, yet acknowledged that the real issue remaining is the willingness of the EC to actually

4. Speech by Mr. Valenti, "The New Trade Religion: Culture and Quotas" at Georgetown University Center for German and European Studies and the Karl F. Landegger Program in International Business Diplomacy, Washington, D.C., Oct. 2, 1991.

5. Oct. 9, 1991.

negotiate. She added "we have not had to-date even one day of political negotiations in agriculture."⁶

Once the agricultural negotiations are unblocked it will take four to six months to conclude the Uruguay Round simply because the stalemate has delayed work in other areas. In the market access group, one-third of the 9,000 tariff items under discussion are agricultural. Thus, it is very difficult to negotiate agreements in other areas when many countries have established their principal negotiating priority as market access for their agricultural goods. A large group of GATT members, therefore, are unwilling to compromise elsewhere pending a clear understanding of their agricultural access issues. Obviously, this presents a troubling "chicken or egg" situation. Then, of course, there is the EC view—consistently confusing.

EC Commissioner Frans Andriessen said in early October, 1991, that expectations for agricultural reform are too high in the short term. As a result, he concluded, insufficient offers have been made in other areas which prevent a package deal. Moving ahead in four or five key sectors is the only reasonable way the EC can meet demands in agriculture, he stated.

On the other hand, EC Commissioner Leon Britton told a Washington, D.C., audience on September 23, 1991, that the time has come for the EC to specify more precisely the details of an informal offer EC Agriculture Commissioner Ray MacSharry made at the 1991 EC ministerial meeting. That offer indicated a willingness of the EC to consider restrictions on the volume of its subsidized exports and allow market access of three percent for goods whose access fell below that level. It also would have dropped plans to restrict imports of soybeans and feed grains. The EC attached a number of conditions to that offer, which trading partners rejected as insufficient, by insisting on rebalancing concessions for corn gluten feed and other non-grain feed ingredients. In addition, the EC wanted a commitment that the "mechanisms" from the Uruguay Round negotiations would be considered "compatible with GATT."⁷ This would have ruled out dispute settlement panels, leaving only monitoring or consultations as a follow-up. In essence a "gutting" of the enforceability provisions deemed key by the United States.

Are those words of encouragement? Or are we indeed "reading the entrails of a pig?"⁸ Only time and patience will tell.

6. *Inside U.S. Trade*: Special Report, Sept. 27, 1991, page S-1.

7. *Inside U.S. Trade*: Special Report, Sept. 27, 1991, page S-2.

8. See *supra* note 4 and accompanying text. Speech by Mr. Valenti, "The New Trade Religion: Culture and Quotas" at Georgetown University Center for German and European Studies and the Karl F. Landegger Program in International Business Diplomacy, Washington, D.C., Oct. 2, 1991.

III. UNITED STATES POST ROUND TRADE AGENDA

But let us assume no successful Uruguay Round completion. What will the United States do?

First, we must remember the three-prong trade strategy of the Bush Administration announced in February of 1989: (1) to achieve a successful conclusion of the Uruguay Round of global trade talks; (2) to launch individual and hemispheric market-opening negotiations with our key trading partners, and; (3) to leverage the power of our domestic demand to create market openings throughout the world.

That said, let me assure you that if the Uruguay Round falters our trade policy will remain strong. We will continue to press for open markets in every forum available to us.

A. The North American Free Trade Agreement

Late in September, 1991, Ambassador Hills and her counterparts in Canada and Mexico met for the third time to continue negotiations for a North American Free Trade Agreement (NAFTA). Together we could create the largest, richest market in the world with 360 million consumers and \$6 trillion in annual output.

Already the United States has seen the benefits of liberalizing trade with Mexico. Since 1986, when Mexico joined the General Agreement on Tariffs and Trade, and reduced its tariff protections from 100 percent to roughly ten percent, United States exports to Mexico have more than doubled, rising from \$12.4 billion to an annualized rate of \$28.4 billion in 1990.⁹

The doubling of United States exports created 320,000 United States jobs. Each additional \$1 billion of United States exports will mean 19,000 new United States jobs.¹⁰

All sectors of the United States economy have benefited from this market opening: exports of automobiles and auto parts have quadrupled; exports of corn have tripled; and exports of telecommunications equipment have doubled. Exports of iron and steel, that were running a \$12 million deficit four years ago, now are tallying a \$300 million surplus. Just four years ago we had a \$91 million deficit in textiles and apparel trade with Mexico.¹¹ Today, we are running a surplus.

Mexico is our fastest growing export opportunity. United States

9. Testimony of Ambassador Carla A. Hills, United States Trade Representative, before the Committee on Finance, United States Senate, Washington, D.C., Mar. 14, 1991.

10. *Id.*

11. Testimony of Ambassador Carla A. Hills, United States Trade Representative, before the Subcommittee on Commerce, Consumer Protection and Competitiveness, Committee on Energy and Commerce, U.S. House of Representatives, Washington, D.C., Mar. 20, 1991.

sales to Mexico are double those to either Korea or Taiwan, three times those to Hong Kong, four times those to China, and five times those to Brazil.¹² Indeed, our exports to Mexico have grown twice as fast as compared with our exports to the rest of the world. Mexico buys a full thirty-five percent more from the United States per person than does the far more affluent European Community.

A free trade agreement would not only lock in these gains, but also create new openings for United States industry. The NAFTA will improve access for United States exports to a market which is expected to have 100 million Mexican consumers by the year 2000.

Despite independent economic analysis and anecdotal evidence, some are concerned that more open trade with Mexico will hurt United States workers. However, all the economic studies show that total United States exports will increase by as much as Mexican trade barriers decrease. And, as illustrated below, these exports will help generate jobs in the United States—particularly in higher-wage, higher-technology industries.

The experience of the last decade lends credence to this assertion. During the 1980s, United States firms set up factories in Mexico at a record pace under the maquiladora program.¹³ As a result, thousands of jobs were created and retained on the United States side of the border to support those facilities, according to studies by the Office of the United States Trade Representative.¹⁴

A free trade agreement also could save United States jobs by enabling our companies to remain competitive in relation to Asian and European firms. Often, the alternative to production in Mexico under a free trade agreement is not continued production in the United States, but rather to move operations to East Asia. Keeping production in Mexico will not only save many United States jobs, but also generate new ones as Mexico spends \$.70 of every trade dollar on United States goods.

The availability of Mexico as a factory site currently has a positive effect on United States employment. For example, Kendall Co., a Massachusetts-based medical equipment maker, says that the Mexican maquiladora program helps it compete effectively in certain segments

12. *Id.*

13. The maquiladora program is a special set of significantly reduced tariff, trade and market access provisions agreed to between the U.S. and Mexico to encourage economic growth and job creation in certain parts of Mexico that border the United States. This program has created thousands of new jobs in Mexico and considerable U.S. business investment and factory/assembly enterprises owned by Americans in eligible Mexican locations. The jobs created are generally of very low pay scale compared to U.S. pay structure.

14. Testimony of Ambassador Carla A. Hills, United States Trade Representative, before the Committee on Ways & Means, U.S. House of Representatives, Washington, D.C., Mar. 12, 1991.

of the health-care market. Without the availability of Mexican production, approximately 3,000 Kendall jobs that exist within the United States would have been in jeopardy.

B. The Enterprise for the Americas Initiative

The North American Free Trade Agreement can be seen as the model for others to come. The NAFTA is the first step in the creation of President Bush's vision of a hemispheric free trade area—the ultimate objective of our Enterprise for the Americas Initiative (EAI). Just a year after President Bush announced the EAI, we have made remarkable progress toward the implementation of the President's vision, as illustrated below.

The United States has signed individual framework agreements with 11 Latin American nations: Bolivia, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Honduras, Nicaragua, Panama, Peru and Venezuela. These agreements contain declarations of trade and investment principles, commitments to consult on a regular basis, and initial agendas for our consultations.

In June of 1991, we signed a similar framework agreement with the countries forming the Southern Common Market (MERCOSUR)—Argentina, Brazil, Paraguay and Uruguay. This framework agreement on trade and investment is the first between the United States and a group of Latin American nations joined together for the purpose of expanded trade. In July of 1991, we signed a framework agreement with the thirteen English-speaking nations of the Caribbean Common Market.

A few years ago, such cooperation between the United States and its neighbors in Latin America would have been impossible. Historic distrust of Washington fostered by years of American military intervention in Latin America, aggressive United States efforts to force Latin countries to restructure their debt and overhaul their centralized economies, and unstable Latin political leadership only recently have changed sufficiently to allow meaningful negotiations to commence. Thus, these framework agreements demonstrate an extraordinary convergence of our hemispheric philosophies and purpose. Throughout Latin America there is a bold new spirit of freedom and free markets.

C. Regionalism versus Multilateralism

Some view the United States' efforts in the Western Hemisphere as a retreat from the multilateral trading system, which has served us well for over forty years. This is a mistaken perception. Our interest is to build bridges, not barriers, to world markets. We are encouraging

the integration of the world's trading nations, not its break-up into competing blocks.

Regional efforts to lower trade barriers tear the fabric of the world trading system only if they result in new barriers to the rest of the world. Our efforts in Mexico, Latin America, and elsewhere, augment our broader global efforts to open markets and expand trade. Far from raising new barriers to the outside, they will foster economic growth in these countries and create new market opportunities for all. We wish to grow rich with our neighbors, but not at the cost of closing the door to other markets.

Bilateral and regional market-opening initiatives are important to both the United States and the EC. However, if we want our economies to be energized by expanded trade, regional measures must not *substitute* for multilateral negotiations, but should *complement* them. And in each of these hemispheric negotiations the principles of the Uruguay Round provide the basis for framework agreements.

D. Other Trade Initiatives

Meanwhile, we are continuing the successful and profitable implementation of the free-trade arrangement with our largest trading partner, Canada. This has been a great boost to the New England economy.¹⁵

15. *Canada*

The U.S.-Canada Free Trade Agreement (CFTA), which took effect on January 1, 1989, is a historic undertaking offering significant benefits and opportunities to both parties. Canada has long been the United States' largest trading partner, and the CFTA creates the world's largest and most comprehensive bilateral free trade area.

Under the CFTA, trade and investment have increased, and competitiveness has improved. Total merchandise trade grew from \$131 billion in 1987 to \$175 billion in 1990, or 33.6 percent. Due to recession in both countries, merchandise trade for the first three-quarters of 1991 was at the same level as that in the comparable period in 1990, or \$131 billion.

Trade in services grew from a bilateral total of \$14.8 billion in 1987 to \$20.2 billion in 1990 or 36.5 percent. U.S. direct investment in Canada also grew from \$57 billion in 1987 to \$71 billion in 1990, a 24.6 percent increase. Canadian investment in the U.S. increased 50 percent during the 1987 to 1990 period, from \$22 billion to \$33 billion.

The CFTA demonstrates it is both possible and profitable for countries to liberalize trade in many areas. Over time it should stimulate growth, boost incomes and increase the competitiveness of firms in both nations. Implementation of the CFTA has proceeded smoothly during its first three years. Canada and the United States enacted and have put into effect broad implementing legislation and regulations necessary to meet the obligations of the CFTA. Traders and investors on both sides of the border have moved to take advantage of the many opportunities opened by the progressive reduction and elimination of trade and investment barriers. Tariffs on industrial and agricultural products have been progressively reduced according to the agreed upon phase-out schedule. Barriers or restrictive practices in the areas of agricultural trade investment, financial

We are negotiating throughout East Asia to secure market openings and the protection of our patents, trademarks, and copyrights.

In Japan, we are advancing our Structural Impediments Initiative (SII)¹⁶ and seeking greater market opportunities for our lawyers, con-

services, energy trade and cable retransmission have been reduced or liberalized. The outlook is for further growth as the staged removal of impediments continues during the 10-year phase-in period.

One of the most acclaimed successes of the CFTA is the accelerated elimination of tariffs, accomplished at the initiative of the private sector and with the concurrence of Congress. The first two rounds of accelerated tariff elimination have produced agreements covering over 650 products valued at almost \$8 billion. The Administration initiated late in 1991 a third round of this trade liberalizing exercise widely supported on both sides of the border.

The elimination of tariffs and most other trade barriers between the United States and Canada is not only good for both economies, but also for international trade liberalization in general. The CFTA's successful implementation has provided an example for multilateral as well as other bilateral trade negotiations, most especially, the current negotiations to conclude a North American Free Trade Agreement (NAFTA).

16. *Japan, the Pacific Rim and Asia*

Japan: Continuing to expand access to the world's second largest industrial economy remains a top Administration priority, as evidenced by the President Bush's January 1992 trip to Japan.

U.S. trade policy with Japan will continue on four tracks. First, in 1992 we will seek a market-opening agreement for paper products (a \$65 billion market). We look forward to antitrust investigations being conducted in the paper, flat glass, autos and auto parts sectors as well. In each sector, U.S. products have proven their international competitiveness, yet barriers and collusive practices in the Japanese market have impeded or precluded U.S. companies from making sales.

These negotiations will complement other sectoral agreements negotiated under President Bush, including agreements on cellular telephones, third party radio, wood products, and, most recently, the agreement on government procurement of computers. These agreements have already resulted in millions of dollars in new sales.

Second, we will build upon the commitments made by Prime Minister Miyazawa to President Bush to strengthen and expand the Structural Impediments Initiative (SII). SII provides a systemic approach to opening the Japanese market. It has already resulted in better resources for Japan's Fair Trade Commission to enforce Japan's anti-monopoly laws, led to the repeal of the barriers which prevented Toys R Us and other large retailers from establishing a presence in Japan, and created more openings for private foreign investors.

Third, we will continue to press for better access to the Japanese market through the Uruguay Round. We are urging Japan to participate in our tariff elimination proposals for non-ferrous metals and wood products, for instance, and are seeking improved access to financial and legal services through the services market access negotiations. The Uruguay Round draft Final Act also contains important provisions for U.S. interests, including giving the audio-visual copyright owners the right to control rental of their sound recordings and films.

Finally, we will work with the Government of Japan as it seeks to open up Japan's closed corporate markets. For years the Japanese Government impeded imports and discouraged partnerships between Japanese companies and foreign suppliers. Now the Japanese Government must provide leadership to break some

tractors, engineers, and entrepreneurs of all description. In addition, we are working hard to expand trade initiatives with Eastern Europe that will better integrate those countries into the world trading system.¹⁷

of these ingrained habits and practices. Its new "Global Business Partnership" initiative, for instance, has coaxed concrete commitments from 23 large Japanese companies to increase their imports by \$10 billion by 1993. This approach complements the commitments the President received from the Japanese auto industry to expand their purchases of foreign autos and parts by \$10 billion over the next three years.

China: In 1991 the U.S. initiated two section 301 actions against the People's Republic of China—one on deficient protection of copyrights, patents, and other intellectual property rights (IPR), and the other on market access barriers, including high tariffs, quotas, and non-transparent regulations. The intellectual property rights negotiations were resolved favorably on January 17, 1992, when we signed a Memorandum of Understanding (MOU) with the Chinese Government. This agreement, once implemented and enforced, will improve patent, copyright and trade secret protection in China, as well as enforcement of intellectual property rights. The U.S. pharmaceutical, computer software and entertainment industries in particular will benefit from this agreement.

The market access negotiation must conclude no later than October 10, 1992. While the Chinese Government has made progress to eliminate some barriers, including lowering tariffs on a small class of goods and publishing some of its trade laws, serious problems remain to be resolved. There are still very high tariffs on a wide range of U.S. goods, import licensing and quotas are still in effect, U.S. goods continue to face discriminatory standards, and the Chinese system lacks transparency in the promulgation and application of trade laws and regulations. All of these factors must be addressed to successfully resolve the investigation.

In addition to these section 301 investigations, the Customs Service and USTR will continue to investigate and take action to curtail textile fraud, and together with other agencies will seek to address the issue of goods made with prison labor. We will continue to work with our trading partners to examine China's request for entry into the GATT.

Asia/Pacific: The Bush Administration's trade agenda with the Asia and Pacific region has two objectives: (1) to increase market access for exports of U.S. goods and services; and (2) to encourage countries of the region to adhere to multilateral trade rules and disciplines in the day-to-day implementation of their trade policies and practices.

For a successful Uruguay Round, we need the active participation of Korea and the six nations of the Association of Southeast Asian Nations (ASEAN)—Thailand, Indonesia, Malaysia, the Philippines, Brunei, and Singapore—especially in the market access negotiations. We place a high priority on achieving our tariff elimination proposals with ASEAN, and to gaining greater access to their services markets, especially in financial services.

Our longer term goals include: Korean membership in the Organization for Economic Cooperation and Development (OECD), Taiwan's participation in the GATT, graduation of ASEAN countries from developing country status, and creation of a regional organization that can serve as a vehicle for improved economic cooperation in the Pacific Rim, such as the Asia-Pacific Economic Cooperation (APEC) process.

17. *Central and Eastern Europe*

We will continue efforts to assist the emerging democracies in central and

We will continue to work at and through established international economic organizations like the Organization for Economic Cooperation and Development and the G-7 (the group that comprises the leaders of the world's seven largest industrial democracies) to achieve their stated purposes of the implementation of multilateral trading agreements like the Uruguay Round.¹⁸ And we continue to enforce our trade laws as evidenced by the invoking of Section 301 of the 1974 Trade Act on Thursday the 10th¹⁹ against China by Ambassador Hills

eastern Europe and the former Soviet Union by expanding mutual trading opportunities. The President announced a Trade Enhancement Initiative on March 30, 1991. One of its steps is to consider how to grant tariff-free treatment to more of these nations' exports under the Generalized System of Preferences (GSP). That review will be completed and announced in April of 1992. Our goal is to bring these nations into the open global trading system and to promote growth through trade.

18. *OECD*

The Organization for Economic Cooperation and Development (OECD) is the primary forum for the discussion of common economic and social issues confronting the United States, Canada, Western Europe, Japan, Australia, and New Zealand. It was founded in 1960 as the successor to the Organization for European Economic Cooperation which oversaw European participation in the Marshall Plan.

The OECD's fundamental objective is "to achieve the highest sustainable economic growth and employment and a rising standard of living in member countries while maintaining financial stability and thus to contribute to world economy." This objective is pursued through in-depth analysis of economic problems confronting the developed market economies and the development of cooperative solutions to many of these problems.

Common analysis of issues in the OECD often is instrumental in forging a consensus among OECD countries to pursue certain negotiating goals in other international fora such as the GATT. Work in the OECD, for example, was instrumental in framing a number of key negotiating issues in the Uruguay Round—in particular the relatively new issues of trade in services, Trade Related Investment Measures (TRIMs), Trade Related Intellectual Property rights (TRIPs) and agriculture.

19. Section 301 is an effective trade law tool to enforce U.S. rights under bilateral and multilateral trade agreements. Section 301 may also be used to respond to unreasonable, unjustifiable, or discriminatory foreign government practices that burden or restrict U.S. commerce. For example, section 301 may be used to increase opportunities for exporting U.S. goods and services, provide more equitable conditions for U.S. investment abroad, and obtain more effective protection worldwide for U.S. intellectual property.

Under section 301, private parties may petition USTR to investigate a foreign government policy or practice and take action. USTR may also initiate such investigations on its own. In 1991 USTR initiated two investigations in response to industry petitions, and self-initiated four investigations. In addition to these six investigations, USTR continued consultations or other activities on two other investigations initiated prior to 1991, and monitored foreign government compliance with trade agreements or other commitments that were the subject of previous investigations.

Pursuant to the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 (the "1988 Trade Act"), the USTR must identify those countries that deny adequate and effective protection for intellectual prop-

demanding therein the removal of Chinese trade barriers to United States goods.

IV. CONCLUSION

But even as we work to open global markets with or without a successful Round conclusion, we must be on guard. The political desire to open markets—and to keep them open—is always under attack. There are those in this country and abroad who think that they can solve their problems by building barriers to trade. History has shown them to be dead wrong. The record of GATT has proven them wrong.

"Protection," says Nobel laureate Milton Friedman, "is a really good label for a very bad cause."²⁰ Protectionism hurts people. It

erty rights or deny fair and equitable market access for persons that rely on intellectual property protection. Such countries that have the most onerous or egregious acts, policies or practices and whose acts, policies or practices have the greatest adverse impact (actual or potential) on the relevant U.S. products must be designated as priority foreign countries.

Priority foreign countries are potentially subject to initiation of an investigation under section 301 conducted on an accelerated time frame. USTR may not designate a country as a priority foreign country if it is entering into good faith negotiations, or making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of intellectual property rights.

USTR must consider designation of countries each year and issue a decision within 30 days after issuance of the *National Trade Estimate* (NTE) report. In addition, USTR may designate a trading partner as a priority foreign country or remove such designation at any time the factual circumstances warrant such action.

USTR has also created the "priority watch list" and "watch list" under "special 301." Placement of a trading partner on the "priority watch list" or "watch list" indicates that particular problems exist with respect to the protection or enforcement of intellectual property rights or market access for persons relying on intellectual property. Countries placed on the "priority watch list" are the focus of increased bilateral attention on the problem areas.

On April 26, 1991 USTR identified India, Thailand and the People's Republic of China (PRC) as priority foreign countries. On May 26, 1991, the USTR initiated section 301 investigations of the acts, policies and practices of the Government of India relating to the protection of intellectual property and market access for audio-visual works (301-85) and on October 10, 1991 the acts, policies and practices of the PRC concerning the protection and enforcement of intellectual property rights (301-86). On November 26, 1991 USTR extended the deadline for completing these investigations because of the complex and complicated issues involved.

On January 17, 1992 the United States and the PRC signed a Memorandum of Understanding that provided the basis for terminating the section 301 investigation and revoking the PRC's identification as a priority foreign country. Under this agreement, the PRC will make significant improvements in the protection provided to patents, copyrights and trade secrets. The PRC has also agreed to provide effective enforcement procedures and remedies against infringement of all intellectual property rights.

20. 1991 *United States Trade Policy Agenda and 1990 Annual Report of The President of the United States*, page 2, United States Government Printing Office.

stifles innovation, insulates them from the marketplace, and robs them of opportunities and choices. The people, the consumers of our country and the world, must recognize this fact.

Choice is the indelible link between a democratic political system and a free economic system. Everyone should have the ability to choose how, when and where to buy and sell goods and services freely in a fair market operating under full and fair international laws.

In a post Uruguay Round world—a world pushed into rapid change in order to respond to people of the world, particularly in Eastern Europe and the Soviet Union—trade access to goods and services is essential. The role of international law and institutions involving trade must continue to grow stronger with or without a fully successful conclusion to the Uruguay Round. I believe the Round will be ultimately successful.

If the world trading leaders chose to act on the basis of what I believe they all know: (1) that trade and international commerce should indeed be used as a tool of world progress and peace rather than a selfish weapon of destruction, and; (2) that such can only be achieved by international laws and institutions; we may well see the Robert Mossbachers and Carla Hills²¹ of this country replace Colin Powell and Norman Schwarzkopf²² as the most important commanders in the field. Then we will truly see a peace dividend of immeasurable proportions.

21. Robert A. Mossbacher, Secretary, United States Department of Commerce; Ambassador Carla A. Hills, United States Trade Representative.

22. General Colin L. Powell, Chairman, Joint Chiefs of Staff, United States Department of Defense. General H. Norman Schwarzkopf, United States Army, Commander in Chief, United States Central Command.

APPENDIX I

GATT Summary on Agriculture Negotiations
20 September 1991*URUGUAY ROUND: NEGOTIATING GROUP ON AGRICULTURE**Meeting of Friday, 20 September 1991*
Chairman's Report on Informal Discussions

1. When I last reported to this Group on 26 July, I announced that I would circulate a number of addenda to the Options Paper (document MTW.GNG/AG/W/1) to help in intensifying participants' exploration of the options. You have all subsequently received these addenda, which were issued on 2 August as AG/W/1/Add.1-11. I would draw your attention to the covering note which points out that, like the Note on Options to which they refer, these addenda are issued on the Chairman's own responsibility, are not exhaustive and are without prejudice to participants' positions on these other issues which may also need to be considered further.
2. During this week I have resumed my informal consultations on the three areas of domestic support, market access and export competition, taking into account the Options paper and the addenda, while moving on to consider some of the other issues which also need to be addressed as part of the agriculture package.
3. In the area of *domestic support*, my consultations this week have centered on the option of defining the "*Green Box*" (policies to be exempt from reduction) and in particular on the criteria which might be established to govern eligibility for this exemption. Following my earlier consultations, AG/W/1/Add.3 set out some possible general criteria and explored more specific provisions relating to policies of the government service type. This week I have also discussed the criteria which could apply to certain direct payments to producers which might be considered "green".
4. As with government services, defining green direct payments might involve a combination of generally-applicable and policy-specific criteria. This approach seems to be widely supported as a modality for further development, but participants have nonetheless noted that, on the one hand, we should avoid excessive complication and, on the other, ensure sufficient precision in the criteria which are finally agreed to help avoid, and where unavoidable guide any future dispute settlement processes.
5. *Direct payments*, whose potential effect on production and trade is generally a greater concern than that of government services, is an area where this balance will not be easy to strike. It involves issues such as: the degree of decoupling of support from production to be required, and how this might be ensured; and to what extent and

under what additional conditions payments related to production factors may be considered "green." Specific points on which views remain divergent include whether or not to require quantitative limits on any "green" direct payments, or degressive rates of support past some threshold.

6. There is substantial work still to be done on these and other questions, and I am encouraged that it is proceeding along clear and constructive lines. I have noted, however, that for a number of participants the final composition of the "Green Box" is a political decision which cannot be made in isolation from the nature of the commitments to be undertaken concerning "amber" support as well as in the areas of market access and export competition.

7. My consultations on *market access* concerned principally Article XI:2, market access related aspects of non-trade concerns, and the question of a special safeguard in the context of tariffication.

8. The discussion on Article XI:2 revolved principally around Article XI:2(c)1. It was at this stage inconclusive, with strongly held positions apparent for both elimination of the sub-Article and for its clarification. Again, the issue is largely of a political nature, and may be only judged once the overall package of agriculture has sharper contours.

9. Under the general heading of non-trade concerns, food security was often cited, in addition to concerns such as environmental issues, the maintenance of rural economies or regional development. Despite useful discussions during the week, there is no one view of what relevant non-trade concerns are and, more importantly, there is no agreement that the market access area is the most appropriate area to take them into account.

10. I should note in this connection that many participants regarded the consultations on the "green box" as an appropriate means to take account of many of the non-trade concerns that have been raised. Moreover, with particular reference to food security, many participants believed that the removal of Article XI:2(a)—the exemption from the prohibition of export restrictions under certain conditions—would reduce concerns about food security. No arguments were presented for its retention although, of course, the question remains open. The decisions outstanding in this area are, I believe, largely political in nature and little further progress can be made before greater precision is apparent in the modalities of the reform package.

11. I also gained from some participants preliminary views concerning a special agricultural safeguard mechanism in the context of tariffication. The scope and duration of such a safeguard remains open, but progress was made on a number of issues which may be relevant regarding the form and the modalities of applications of such safeguard. Those consulted tended to agree that both a price-based and quantity-based trigger would be appropriate and useful comments were made on the form such triggers could take.

12. As regards *export competition*, this week's informal consultations were concentrated mainly on the policy coverage of reduction commitments, using as a basis for further consideration the draft generic criteria and listing of export subsidy practices contained in MTN.GNG/AG/W/1/Addendum 10. Producer financed export subsidies and subsidies on agricultural primary products incorporated in exported products were also considered, along with some of the other matters that are mentioned in the Add.10 list, such as bona fide food aid and export sales from government-owned stocks.

13. Overall, the work undertaken on export competition this week has been useful. The fact that participants are increasingly focusing their attention and comments on the inter-linkages between specific commitments in this and the other main areas is evidence, as I see it, that a start is being made in really going into depth in this area.

14. This will not be easy. Compared to market access and domestic support, discussions on export competition, for example on the definition of policy coverage or on the modalities of reduction commitments, just to mention some of the key issues, are less advanced.

15. Clearly, as a number of participants have reiterated, there are fundamental political issues that will have to be resolved (what is to be reduced, what is to be disciplined, and how) before it will be possible to get to grips with many of the technical points involved. At the same time my own feeling is that the key political issues have to be presented for political consideration and decision against the background, or within the framework, of what I have called a solid working hypothesis in the area of export competition which takes account of the inter-linkages and maps out the general direction in which we might move.

16. I might add that the inter-linkages raised relate not only to equivalence of commitments as between one category of measures and another as they may affect export competition, but also more broadly to equivalence and balance in terms of an overall package and the framework of rules that would govern agricultural export competition in the longer term.

17. This is where our efforts should be directed in the coming weeks—not only in the consultations I shall be organizing—but also in capitals and in your own bilateral consultations.

18. I observed in July that we were reaching a point where the issues were becoming as much political as technical. It is clear from my presentation today that we have indeed reached that point. While there is still useful technical work that can be done and is being done, some significant political decisions on the modalities for substantive negotiation must be taken soon. Our work over the last six months has helped to make it clear what these decisions concern, and what are some of the options available. I will be continuing my informal consultations in the week of 1 October and again in the week of 16 Octo-

ber, in order to maintain and intensify a process which I trust will contribute to a prompt and appropriate resolution of the outstanding questions.

APPENDIX II

London Economic Summit 1991

Economic Declaration
Building World Partnership

1. We, the Heads of State and Government of the seven major industrial democracies and the representatives of the European Community, met in London for our seventeenth annual Summit.
2. The spread of freedom and democracy which we celebrated at Houston has gathered pace over the last year. Together the international community has overcome a major threat to world peace in the Gulf. But new challenges and new opportunities confront us.
3. We seek to build world partnership, based on common values, and to strengthen the international order. Our aim is to underpin democracy, human rights, the rule of law and sound economic management, which together provide the key to prosperity. To achieve this aim, we will promote a truly multilateral system, which is secure and adaptable and in which responsibility is shared widely and equitably. Central to our aim is the need for a stronger, more effective UN system, and for greater attention to the proliferation and transfer of weapons.
- Economic policy**
4. Over the last year, some of our economies have maintained good growth, while most have slowed down and some gone into recession. But a global recession has been avoided. The uncertainty created by the Gulf crisis is behind us. We welcome the fact that there are now increasing signs of economic recovery. Progress has been made too in reducing the largest trade and current account imbalances.
5. Our shared objectives are a sustained recovery and price stability. To this end, we are determined to maintain, including through our economic policy coordination process, the medium-term strategy endorsed by earlier Summits. This strategy has contained inflationary expectations and created the conditions for sustainable growth and new jobs.
6. We therefore commit ourselves to implement fiscal and monetary policies, which, while reflecting the different situations in our countries, provide the basis for lower real interest rates. In this connection, continued progress in reducing budget deficits is essential. This, together with the efforts being made to reduce impediments to private saving, will help generate the increase in global savings needed to meet demands for investment. We also welcome the close cooperation on exchange markets and the work to improve the functioning of the international monetary system.
7. We will also, with the help of the Organization for Economic Cooperation and Development (OECD) and other institutions, pursue re-

forms to improve economic efficiency and thus the potential for growth. These include:

- a) greater competition in our economies, including regulatory reform. This can enhance consumer choice, reduce prices and ease burdens on business.
- b) greater transparency, elimination or enhanced discipline in subsidies that have distorting effects, since such subsidies lead to inefficient allocation of resources and inflate public expenditure.
- c) improved education and training, to enhance the skills and improve the opportunities of those both in and out of employment, as well as policies contributing to greater flexibility in the employment system.
- d) a more efficient public sector, for example through higher standards of management and including possibilities for privatization and contracting out.
- e) the wide and rapid diffusion of advances in science and technology.
- f) essential investment, both private and public, in infrastructure.

8. We will encourage work nationally and internationally to develop cost-effective economic instruments for protecting the environment, such as taxes, charges and tradeable permits.

International trade

9. No issue has more far-reaching implications for the future prospects of the world economy than the successful conclusion of the Uruguay Round. It will stimulate non-inflationary growth by bolstering confidence, reversing protectionism and increasing trade flows. It will be essential to encourage the integration of developing countries and Central and Eastern European nations into the multilateral trading system. All these benefits will be lost if we cannot conclude the Round.

10. We therefore commit ourselves to an ambitious, global and balanced package of results from the Round, with the widest possible participation by both developed and developing countries. The aim of all contracting parties should be to complete the Round before the end of 1991. We shall each remain personally involved in this process, ready to intervene with one another if differences can only be resolved at the highest level.

11. To achieve our objectives, sustained progress will be needed in the negotiations at Geneva in all areas over the rest of this year. The principal requirement is to move forward urgently in the following areas taken together:

- a) market access, where it is necessary, in particular, to cut tariff peaks for some products while moving to zero tariffs for others, as part of a substantial reduction of tariffs and parallel action against non-tariff barriers.
- b) agriculture, where a framework must be decided upon to provide for specific binding commitments in domestic support, market access and export competition, so that substantial progressive reductions of support and protection may be agreed in each area, taking into account non-trade concerns.
- c) services, where accord on a general agreement on trade in services should be reinforced by substantial and binding initial commitments to reduce or remove existing restrictions on services trade and not to impose new ones.
- d) intellectual property, where clear and enforceable rules and obligations to protect all property rights are necessary to encourage investment and the spread of technology.

12. Progress on these issues will encourage final agreement in areas already close to conclusion, such as textiles, tropical products, safeguards and dispute settlement. Agreement to an improved dispute settlement mechanism should lead to a commitment to operate only under the multilateral rules. Taken all together, these and the other elements of the negotiations, including GATT rule-making, should amount to the substantial, wide-ranging package which we seek.

13. We will seek to ensure that regional integration is compatible with the multilateral trading system.

14. As we noted at Houston, a successful outcome of the Uruguay Round will also call for the institutional reinforcement of the multilateral trading system. The concept of an international trade organization should be addressed in this context.

15. Open markets help to create the resources needed to protect the environment. We therefore commend the OECD's pioneering work in ensuring that trade and environment policies are mutually supporting. We look to the General Agreement on Tariffs and Trade (GATT) to define how trade measures can properly be used for environmental purposes.

16. We are convinced the OECD members must overcome in the near future and, in any case, by the end of the year, remaining obstacles to an agreement on reducing the distortions that result from the use of subsidized export credits and of tied aid credits. We welcome the initiative of the OECD in studying export credit premium systems and structures and look forward to an early report.

Energy

17. As the Gulf crisis showed, the supply and price of oil remain vulnerable to political shocks, which disturb the world economy. But these shocks have been contained by the effective operation of the market, by the welcome increase in supplies by certain oil-exporting countries and by the actions co-ordinated by the International Energy Agency (IEA), particularly the use of stocks. We are committed to strengthen the IEA's emergency preparedness and its supporting measures. Since the crisis has led to improved relations between producers and consumers, contacts among all market participants could be further developed to promote communication, transparency and the efficient working of market forces.

18. We will work to secure stable worldwide energy supplies, to remove barriers to energy trade and investment, to encourage high environmental and safety standards and to promote international cooperation on research and development in all these areas. We will also seek to improve energy efficiency and to price energy from all sources so as to reflect costs fully, including environmental costs.

19. In this context, nuclear power generation contributes to diversifying energy sources and reducing greenhouse gas emissions. In developing nuclear power as an economic energy source, it is essential to

achieve and maintain the highest available standards of safety, including in waste management, and to encourage cooperation to this end throughout the world. The safety situation in Central and Eastern Europe and the Soviet Union deserves particular attention. This is an urgent problem and we call upon the international community to develop an effective means of coordinating its response.

20. The commercial development of renewable energy sources and their integration with general energy systems should also be encouraged, because of the advantages these sources offer for environmental protection and energy security.

21. We all intend to take a full part in the initiative of the European Community for the establishment of a European Energy Charter on the basis of equal rights and obligations of signatory countries. The aid is to promote free and undistorted energy trade, to enhance security of supply, to protect the environment and to assist economic reform in Central and East European countries and the Soviet Union, especially by creating an open, non-discriminatory regime for commercial energy investment.